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RECEIVED

March 22, 2017

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BY CERTIFIED MAIL

OFFICE OF THE REGIONAL ADMINISTRATOR

Guy Edwards, President
Aggregate Industries–Northeast Region, Inc.
6211 Ann Arbor Road
Dundee, MI 48131
Certified Mail #: 7014 3490 0000 7430 0466

Plant Manager, Aggregate Industries
16 Oak Street
Chelmsford, MA 01824
Certified Mail #: 7014 3490 0000 7429 9692

RE : 60-Day Notice of Violations and Intent to File Suit Regarding Noncompliance with Federal Clean Water Act's Industrial Stormwater Discharge Requirements: 16 Oak Street, Chelmsford, MA

Dear Mr. Edwards,

This office represents Clean Water Action, a national non-profit citizens' organization working for prevention of pollution in the nation's waters. Clean Water Action has over one million members nationally, more than 30,000 of whom reside in Massachusetts.

We write to give notice that Clean Water Action intends to file a civil action in the United States District Court for the District of Massachusetts under section 505 of the Federal Clean Water Act (the "Act") against Aggregate Industries – Northeast Region, Inc. ("Aggregate"). The subject of the action will be Aggregate's unpermitted discharge of industrial material and its failure to properly monitor and control its polluted stormwater discharges to waters of the United States from its asphalt materials facility in Chelmsford, Massachusetts (the "Facility"). By allowing non-stormwater discharges into adjacent wetlands and waterways, and by failing to adequately monitor and control its polluted stormwater discharges, Aggregate is violating the Clean Water Act and the terms of its EPA's Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity.¹

BACKGROUND

Activities that take place at industrial facilities, such as material handling and storage, are often exposed to the weather. As runoff from rain or snowmelt comes into contact with these materials, it picks up pollutants and transports them to nearby rivers, lakes, or coastal waters and tributaries thereto, including but not limited to storm sewer systems, wetlands, and other surface

¹ The General Permit was first issued in 1995 and most recently reissued in June 2015. See 60 Fed. Reg. 50804 (Sept. 29, 1995); 65 Fed. Reg. 64746 (Oct. 30, 2000); 73 Fed. Reg. 56572 (Sept. 29, 2008), and reissued in 2015 pursuant to 80 Fed. Reg. 34403 (June 4, 2015).

March 22, 2017

waters. Stormwater pollution is a significant source of water quality problems for the nation's waters.

Clean Water Action will ask the Court to ensure Aggregate's future compliance with the Act, assess civil penalties in an appropriate amount,² award plaintiff its litigation costs, including attorney and expert fees, and award any other relief the Court deems appropriate. Clean Water Action's complaint will be filed a minimum of 60 days after the postmark date of this letter. This is a formal 60-day notice of intent to sue that is being served pursuant to 40 C.F.R., Part 135.

This notice is being provided by:

Cindy Luppi, New England Regional Co-Director
Clean Water Action
88 Broad Street, Lower Level
Boston, MA 02110
(617) 338-8131
(617) 335-6449 (fax)

Counsel for Clean Water Action in this case is:

Nora J. Chorover
Law Office of Nora J. Chorover
11 Green Street
Boston, MA 02130
617-477-3550

AGGREGATE'S VIOLATIONS AND DATES OF VIOLATIONS

A. THE REQUIREMENTS OF THE ACT

1. Pollutant Discharges Without a Permit are Illegal.

The Clean Water Act makes the discharge of pollution into waters of the United States unlawful unless the discharge is in compliance with certain statutory requirements, including the requirement that the discharge be permitted by the federal Environmental Protection Agency ("EPA") under the National Discharge Elimination System ("NPDES").

2. Asphalt Materials Facilities Must Comply with EPA's General Industrial Stormwater Permit.

In order to minimize polluted stormwater discharges from certain categories of industrial facilities, EPA has issued a general industrial stormwater permit (the "Permit"). Asphalt materials facilities are subject to the requirements of this Permit.³ Asphalt materials facilities that carry on

² The Statute authorizes the Court to assess a penalty of *up to* \$37,500 a day for each violation. *See* 33 U.S.C. § 1319(d) and 78 Fed. Reg. 66647 (Nov. 6, 2013).

³ Permit, Section 8(D)(pgs. 61-62); Permit, Appendix D, pg. D-3.

March 22, 2017

other types of activities subject to the requirements of the Permit must also comply with any sector-specific requirements for such co-located industrial activity.⁴

3. Asphalt Materials Facilities Must Develop and Implement a Stormwater Pollution Prevention Plan ("SWPPP").

An owner or operator (hereafter referred to as "operator") of a facility subject to the requirements of the Permit must prepare a SWPPP before being authorized to discharge under the Permit.⁵ The SWPPP must be "prepared in accordance with good engineering practices"⁶ and, among other things,

- identify potential sources of pollution at the facility;⁷
- describe and ensure implementation of control measures that are technologically available and economically practicable and achievable in light of best industry practice;⁸ and
- set forth specific procedures to assure compliance with effluent limitations and monitoring/inspection requirements of the Permit.⁹

4. Asphalt Paving and Roofing Materials Facilities Must Comply with the Terms of the Permit.

The Permit requires asphalt paving and roofing materials facilities to, among other things:

- a. ensure that stormwater discharges meet applicable water quality standards;¹⁰
- b. reduce and/or eliminate pollutants to the extent achievable using control measures (including best management practices) that are technologically available and economically practicable and achievable in light of best industry practice;¹¹
- c. implement specific best management practices set forth in the Permit for asphalt paving and roofing materials facilities;¹²
- d. monitor stormwater discharges for compliance with benchmark limitations and effluent limitations applicable to asphalt paving and roofing materials facilities;¹³
- e. perform and document regular facility and stormwater inspections;¹⁴
- f. timely implement and document any necessary corrective actions;¹⁵
- g. report on monitoring and inspections to EPA by specified deadlines;¹⁶ and
- h. comply with those permit conditions applicable to permittees in Massachusetts, including but not limited to:

⁴ Permit, pg. 61.

⁵ Permit, Section 5.

⁶ Permit, pg. 30 (referring to "control measures").

⁷ Permit, pgs. 32-33.

⁸ Permit, pgs. 14, 33-34.

⁹ Permit, pgs. 34-36.

¹⁰ Permit, pg. 20 ("Your discharge must be controlled as necessary to meet applicable water quality standards.").

¹¹ Permit, pg. 14.

¹² Permit, pg. 61-62.

¹³ Permit, pg. 61. Aggregate was required to monitor for Total Suspended Solids ("TSS") for compliance with benchmark limits.

¹⁴ Permit, pgs. 22-26.

¹⁵ Permit, pgs. 27-29.

¹⁶ Permit, pgs. 47-51.

- i. submission of monitoring results to the Regional Office of the Massachusetts Department of Environmental Protections (“MADEP”) for the MADEP Region in which the Facility is located, where the monitoring identifies exceedences of effluent limits or benchmarks for which monitoring is required under the Permit, and
- ii. where effluent limits and/or benchmarks are exceeded, submission to the MADEP Regional Office of any follow-up monitoring and a description of the corrective actions required and undertaken to meet those effluent limits and/or benchmarks.¹⁷

B. AGGREGATE’S VIOLATIONS AND DATES OF VIOLATIONS

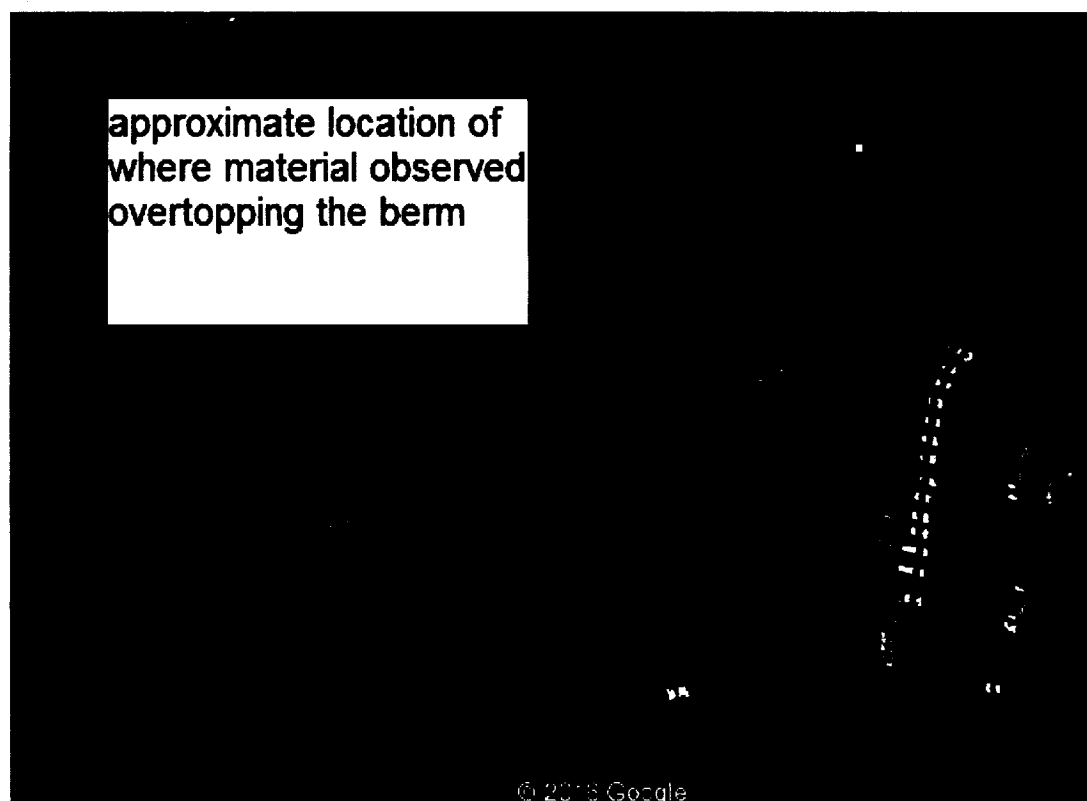
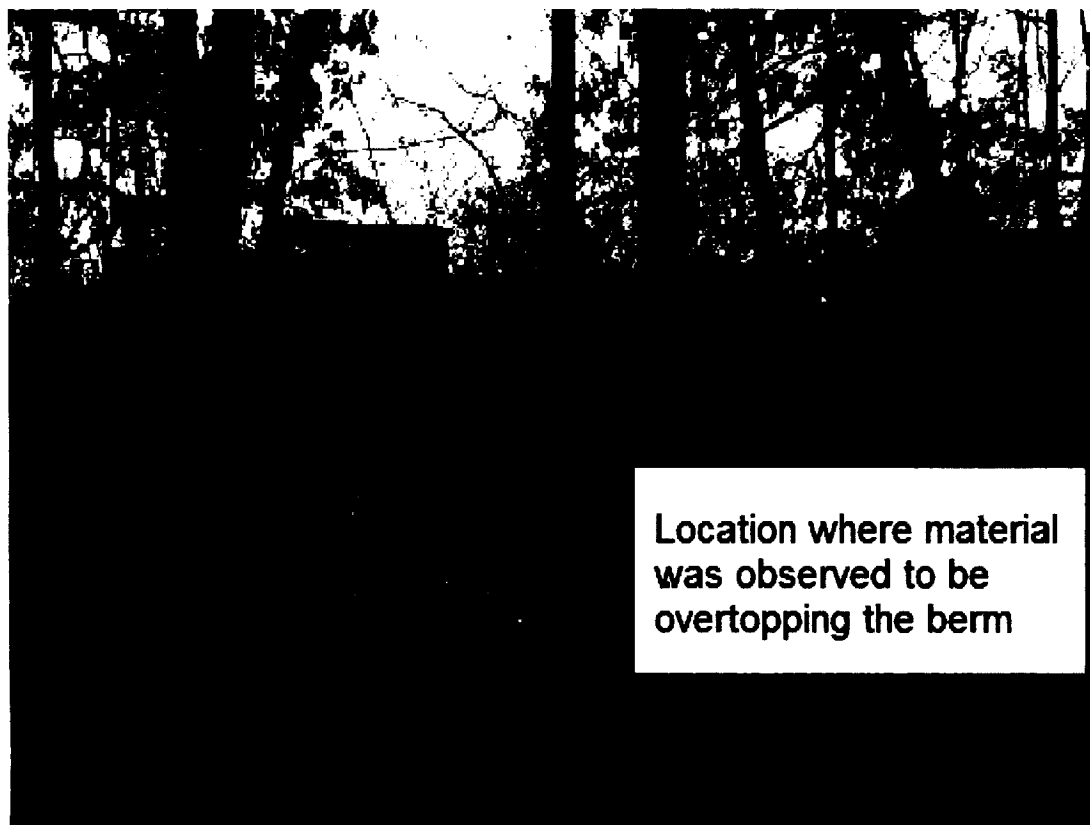
The following violations of the Act are set forth on Exhibit B. These violations have occurred on a daily basis for the last five years and are continuing to occur.¹⁸

1. unpermitted discharge of industrial material into waters of the United States;
2. failure to prepare and implement an adequate SWPPP;
3. failure to ensure that stormwater discharges from the Facility will not cause or have the reasonable potential to cause or contribute to a violation of water quality standards;
4. failure to implement adequate control measures and to comply with corrective action requirements;
5. failure to adequately monitor for compliance with benchmark limitations; and
6. failure to report appropriate monitoring results for the Facility to EPA by the specific deadlines

Aggregate has used and continues to use heavy equipment to push industrial materials into piles at a sufficient height and angle whereby material will fall off into the creek to the north of the facility. On February 28, 2017, industrial material from these piles was observed to have spilled over the berm towards the creek. See the below photo taken on that day, together with a screen shot showing the approximate location of the spill-over. It is highly likely that the materials have entered and will continue to enter the creek from these piles. The heavy equipment and/or material piles constitute point sources within the meaning of the Clean Water Act. The piles of industrial material may also be considered to be point sources. Even if the industrial materials themselves do not make their way to the creek (and there is evidence that they do), the configuration of the piles makes it highly likely that when it rains, gullies will form in the piles, and pollutant-laden stormwater will be discharged from the gullies into the creek. Discharges from erosion gullies are point source discharges.

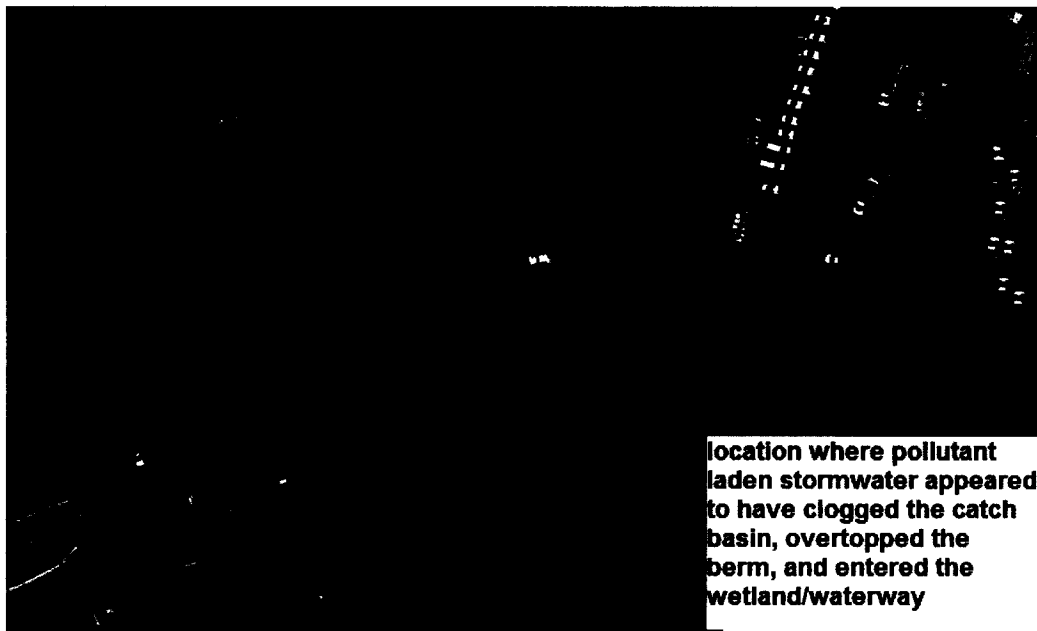
¹⁷ Permit, pg. 170.

¹⁸ Clean Water Action believes that the violations set forth in this Section B have occurred on each day of the last five years, and not just on rain days. However, to the extent it is determined that rain days are relevant in determining the dates of violations, such rain dates through March 22, 2017 are set forth on Exhibit A hereto. The complaint, when filed, will set forth additional rain dates since March 22, 2017.



March 22, 2017

Plaintiff will also allege that there are locations at the facility where uncontrolled and unmonitored pollutant laden stormwater is being discharged to adjacent wetlands and waterways. In October 2016, it was observed that pollutant laden stormwater tends to gather at the catch basin on Oak Street, clog the catch basin and then overtop the berm to enter the wetland to the south of the facility.



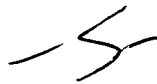
March 22, 2017

Whatever measures Aggregate may have put in place to monitor and control stormwater pollution are not sufficient to comply with the Permit as is evident from these photos showing discharges of industrial materials into adjacent waterbodies. These conditions show a violation of the monitoring and reporting requirements because they show that Aggregate's samples and reports are not representative of actual conditions at the Facility. These conditions show a violation of the permit's requirement to implement adequate control measures because they make clear that Aggregate is not "minimizing" its pollutant discharges. The conditions show that Aggregate is not complying with the Permit's corrective action requirements because the conditions should long ago have been identified and remedied.

CONCLUSION

Clean Water Action believes this Notice of Violations and Intent to File Suit sufficiently states the basis for a civil action. During the 60-day notice period, we would be willing to discuss effective remedies for the violations noted in this letter that may avoid the necessity of litigation. If you wish to pursue such discussions, please have your attorney contact us within the next 20 days so that negotiations may be completed before the end of the 60-day notice period. We do not intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

Sincerely,



Nora J. Chorover
Attorney for
CLEAN WATER ACTION

cc: (by certified mail)

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C T Corporation System, Registered Agent
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Inc.
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EXHIBIT A

DAYS BETWEEN March 22, 2012 AND March 22, 2017 ON WHICH STORMWATER FROM FACILITY DISCHARGED TO WATERS OF THE UNITED STATES

March 2012:	26
April 2012:	2, 13, 23, 24
May 2012:	1, 2, 5, 9, 10, 11, 15, 16, 17, 22, 23
June 2012:	3, 4, 5, 9, 13, 14, 24, 26
July 2012:	4, 19, 29, 30
August 2012:	1, 2, 5, 6, 11, 12, 13, 16, 18, 29
September 2012:	5, 6, 19, 29
October 2012:	1, 3, 4, 5, 8, 11, 15, 16, 20, 29, 30, 31
November 2012:	1, 8, 9, 14
December 2012:	10, 11, 17, 18, 19, 22, 27, 28, 30
January 2013:	17, 29, 31
February 2013:	1, 9, 10, 12, 20, 25, 27, 28
March 2013:	7, 8, 9, 13, 19, 20
April 2013:	1, 10, 11, 20
May 2013:	9, 10, 12, 13, 20, 22, 23, 24, 25, 26, 30
June 2013:	14, 18, 19, 27, 28
July 2013:	2, 9, 24, 26, 30
August 2013:	2, 10, 31
September 2013:	13, 14, 22
October 2013:	5, 6
November 2013:	1, 18, 27, 28
December 2013:	2, 7,
January 2014:	12, 15
February 2014:	6, 14, 16, 19, 20, 21, 22
March 2014:	13, 20, 30, 31
April 2014:	8
May 2014:	1, 17, 28
June 2014:	6, 14, 26
July 2014:	4, 5, 8, 10, 16, 28
August 2014:	8, 14, 22
September 2014:	1, 7, 14
October 2014:	2, 12, 17, 23, 24
November 2014:	2, 7, 14, 17, 18
December 2014:	3, 6, 7, 10, 11, 17, 25
January 2015:	4, 19, 25, 27, 28
February 2015:	3, 6, 8, 9, 10, 15, 16, 22
March 2015:	2, 4, 15, 27, 29
April 2015:	4, 9, 10, 21
May 2015:	13
June 2015:	1, 2, 16, 21, 24, 28, 29
July 2015:	2, 10, 31
August 2015:	12
September 2015:	11, 14, 30
October 2015:	1

November 2015: 11, 12, 13, 20, 21, 29
December 2015: 2, 3, 4, 15, 18, 23, 24, 27, 28, 29, 30
January 2016: 11, 13, 17
February 2016: 4, 6, 9, 16, 17, 24, 25
March 2016: 2, 11, 15, 16, 21, 26, 29
April 2016: 5, 8, 23, 27
May 2016: 24, 25
June 2016: 21
July 2016: 10
August 2016: 11, 14, 17, 22
September 2016: 2, 19, 20, 24, 27
October 2016: 1, 2, 28
November 2016: 16, 30
December 2016: 1
January 2017: 1, 4, 8, 11
February 2017: 8, 10, 13, 26
March 2017: 15

EXHIBIT B
TABLE OF AGGREGATE CHELMSFORD'S VIOLATIONS
March 22, 2012 to the Present

<u>Type of Violation</u>	<u>Quarter</u>	<u>Parameter</u>	<u>Beginning Date of Violation</u>	<u>Earliest End Date of Violation</u>
Unpermitted discharge of industrial material into waters of the United States	n/a	n/a	Mar. 22, 2012	Present
Failure to Prepare and Implement an adequate SWPPP	n/a	n/a	Mar. 22, 2012	Present
Failure to Ensure Discharges Will Not Cause/Contribute to Violation of Water Quality Standards	n/a	n/a	Mar. 22, 2012	Present
Failure to Implement Adequate Control Measures and Corrective Actions	all	TSS ¹	Mar. 22, 2012	Present
Failure to Adequately Monitor for Compliance with Benchmark Limits	Feb-Mar 2012	TSS	Mar. 31, 2012	Present
Failure to Report Appropriate Results of Benchmark Monitoring	Feb-Mar 2012	TSS	Apr. 31, 2012	Present
Failure to Adequately Monitor for Compliance with Benchmark Limits	Apr-Jun 2012	TSS	Jun 30, 2012	Present
Failure to Report Appropriate Results of Benchmark Monitoring	Apr-Jun 2012	TSS	Jul 30, 2012	Present
Failure to Adequately Monitor for Compliance with Benchmark Limits	Jul-Sept 2012	TSS	Sept. 30, 2012	Present
Failure to Report Appropriate Results of Benchmark Monitoring	Jul-Sept 2012	TSS	Oct. 30, 2012	Present
Failure to Adequately Monitor for Compliance with Benchmark Limits	Oct-Dec 2012	TSS	Dec. 31, 2012	Present
Failure to Report Appropriate Results of Benchmark Monitoring	Oct-Dec 2012	TSS	Jan. 30, 2013	Present
Failure to Adequately Monitor for Compliance with Benchmark Limits	Jan.-Mar 2013	TSS	Mar. 31, 2013	Present
Failure to Report Appropriate Results of Benchmark Monitoring	Jan.-Mar 2013	TSS	Apr. 31, 2013	Present
Failure to Adequately Monitor for Compliance with Benchmark Limits	Apr-Jun 2013	TSS	Jun 30, 2013	Present
Failure to Report Appropriate Results of Benchmark Monitoring	Apr-Jun 2013	TSS	Jul 30, 2013	Present
Failure to Adequately Monitor for Compliance with Benchmark Limits	Jul-Sept 2013	TSS	Sept. 30, 2013	Present
Failure to Report Appropriate Results of Benchmark Monitoring	Jul-Sept 2013	TSS	Oct. 30, 2013	Present
Failure to Adequately Monitor for Compliance with Benchmark Limits	Oct-Dec 2013	TSS	Dec. 31, 2013	Present
Failure to Report Appropriate Results of Benchmark Monitoring	Oct-Dec 2013	TSS	Jan. 30, 2014	Present
Failure to Adequately Monitor for Compliance with Benchmark Limits	Jan-Mar 2014	TSS	Mar. 31, 2014	Present
Failure to Report Appropriate Results of Benchmark Monitoring	Jan-Mar 2014	TSS	Apr. 31, 2014	Present
Failure to Adequately Monitor for Compliance with Benchmark Limits	Apr-Jun 2014	TSS	Jun 30, 2014	Present
Failure to Report Appropriate Results of Benchmark Monitoring	Apr-Jun 2014	TSS	Jul 30, 2014	Present
Failure to Adequately Monitor for Compliance with Benchmark Limits	Jul-Sept 2014	TSS	Sept. 30, 2014	Present

¹ Per Section D of the 2015 Multi-Sector General Stormwater Permit, Aggregate Chelmsford was required to monitor and control the presence of Total Suspended Solids (TSS).

<u>Type of Violation</u>	<u>Quarter</u>	<u>Parameter</u>	<u>Beginning Date of Violation</u>	<u>Earliest End Date of Violation</u>
Failure to Report Appropriate Results of Benchmark Monitoring	Jul-Sept. 2014	TSS	Oct. 30, 2014	Present
Failure to Adequately Monitor for Compliance with Benchmark Limits	Oct-Dec 2014	TSS	Dec. 31, 2014	Present
Failure to Report Appropriate Results of Benchmark Monitoring	Oct-Dec 2014	TSS	Jan. 30, 2015	Present
Failure to Adequately Monitor for Compliance with Benchmark Limits	Jan.-Mar 2015	TSS	Mar. 31, 2015	Present
Failure to Report Appropriate Results of Benchmark Monitoring	Jan-Mar 2015	TSS	Apr. 31, 2015	Present
Failure to Adequately Monitor for Compliance with Benchmark Limits	Apr-Jun 2015	TSS	Jun 30, 2015	Present
Failure to Report Appropriate Results of Benchmark Monitoring	Apr-Jun 2015	TSS	Jul 30, 2015	Present
Failure to Adequately Monitor for Compliance with Benchmark Limits	Jul-Sept 2015	TSS	Sept. 30, 2015	Present
Failure to Report Appropriate Results of Benchmark Monitoring	Jul-Sept 2015	TSS	Oct. 30, 2015	Present
Failure to Adequately Monitor for Compliance with Benchmark Limits	Oct-Dec 2015	TSS	Dec. 31, 2015	Present
Failure to Report Appropriate Results of Benchmark Monitoring	Oct-Dec 2015	TSS	Jan. 30, 2016	Present
Failure to Adequately Monitor for Compliance with Benchmark Limits	Jan-Mar 2016	TSS	Mar. 31, 2016	Present
Failure to Report Appropriate Results of Benchmark Monitoring	Jan.-Mar. 2016	TSS	Apr. 31, 2016	Present
Failure to Adequately Monitor for Compliance with Benchmark Limits	Apr-Jun 2016	TSS	Jun 30, 2016	Present
Failure to Report Appropriate Results of Benchmark Monitoring	Apr-Jun 2016	TSS	Jul 30, 2016	Present
Failure to Adequately Monitor for Compliance with Benchmark Limits	Jul-Sept 2016	TSS	Sept. 30, 2016	Present
Failure to Report Appropriate Results of Benchmark Monitoring	Jul-Sept 2016	TSS	Oct. 30, 2016	Present
Failure to Adequately Monitor for Compliance with Benchmark Limits	Oct-Dec 2016	TSS	Dec 31, 2016	Present
Failure to Report Appropriate Results of Benchmark Monitoring	Oct-Dec 2016	TSS	Jan. 30, 2017	Present

